

Barr, Robert CONFIDENTIAL - ATTORNEYS' EYES ONLY May 27, 2006
Redwood Shores, CA

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

-00o-

TELCORDIA TECHNOLOGIES, INC.,)

)

Plaintiff,)

)

vs.) Case No. 04-876-GMS

)

CISCO SYSTEMS,)

)

Defendant.)

)

CONFIDENTIAL ATTORNEYS' EYES ONLY

Deposition of ROBERT BARR, taken on behalf
of Plaintiff, at the 201 Redwood Shores Parkway,
Redwood Shores, California, commencing at
10:04 a.m., Saturday, May 27, 2006, before Richard
M. Raker, CSR No. 3445.

Henderson Legal Services
(202) 220-4158

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1 representation, you'd better check it out.	01:58PM	1 in due course.	02:01PM
2 THE WITNESS: That's what it says on	01:58PM	2 Q. What, if anything, did you do when you	02:01PM
3 page 5. Yes.	01:58PM	3 received a copy of this document?	02:01PM
4 MR. REINES: One at a time, please.	01:58PM	4 A. I don't recall specifically. I read	02:01PM
5 BY MR. PRICE:	01:58PM	5 it. Let's see. I may have -- sometime after this,	02:01PM
6 Q. Eighteen months from October of 1998	01:58PM	6 I believe we engaged outside counsel. I don't know	02:02PM
7 would be sometime in early 2000; is that correct?	01:59PM	7 exactly when.	02:02PM
8 A. That's correct?	01:59PM	8 Q. Why did you do that?	02:02PM
9 Q. Exhibit Barr 019, which is the -- what	01:59PM	9 A. Oh, this was -- first time there was	02:02PM
10 you've characterized as the mistake letter from	01:59PM	10 a -- there is more patents involved and a specific	02:02PM
11 Mr. Kovalick, says that Telcordia intends to	01:59PM	11 allegation of infringement, so I probably engaged	02:02PM
12 enforce its patent portfolio against any and all	01:59PM	12 outside counsel.	02:02PM
13 infringers now or upon the conclusion of the above	01:59PM	13 Q. And who was that?	02:02PM
14 litigation, closed quote. Referring to litigation	01:59PM	14 A. Baker Botts.	02:02PM
15 that was commenced in October 1998.	01:59PM	15 Q. And did Baker Botts prepare a written	02:02PM
16 In your experience, how long does a	01:59PM	16 opinion of infringement, validity, and/or	02:02PM
17 patent case typically take to get to trial and	01:59PM	17 enforceability relating to any of these patents?	02:02PM
18 through appeal?	01:59PM	18 MR. REINES: Give me that question	02:03PM
19 MR. REINES: You mean sitting here now	01:59PM	19 back.	02:03PM
20 as the head of the Berkeley Center for Law &	01:59PM	20 (The record was read back as follows:	02:03PM
21 Technology or at that time or --	01:59PM	21 "Q. And did Baker Botts prepare a	02:02PM
22 BY MR. PRICE:	01:59PM	22 written opinion of infringement,	02:02PM
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1 Q. At that time.	01:59PM	1 validity, and/or enforceability	02:02PM
2 A. Anything from a year to ten years.	01:59PM	2 relating to any of these patents?"	02:03PM
3 MR. PRICE: Let's mark the next	02:00PM	3 MR. REINES: I'm going to object on	02:03PM
4 document as Exhibit Barr 021 for identification.	02:00PM	4 vagueness and things. If the question's whether --	02:03PM
5 (Exhibit Barr 021 was marked for	02:00PM	5 I'll permit a question on whether they received	02:03PM
6 identification by the reporter.)	02:00PM	6 legal advice, related to those questions, in	02:03PM
7 MR. PRICE: This is a document with	02:00PM	7 written form.	02:03PM
8 production numbers TELC0256231 through -233.01,	02:00PM	8 I don't know what you mean by	02:03PM
9 inclusive -- I'm sorry -- point 001, inclusive.	02:00PM	9 "opinion," and I don't think it's a loaded term.	02:03PM
10 Q. Can you identify this document?	02:00PM	10 And I think it invades the privilege. So I think	02:03PM
11 A. The first page is a letter to	02:01PM	11 you can get what you want just by using the term	02:03PM
12 Mr. Scheinman on September 7, 2001, from	02:01PM	12 "legal advice."	02:03PM
13 Mr. Giordano. And then there are -- there is an	02:01PM	13 BY MR. PRICE:	02:03PM
14 attachment of several pages.	02:01PM	14 Q. Did Baker Botts provide legal advice,	02:03PM
15 Q. Have you seen this document before?	02:01PM	15 in Mr. Reines's term, when you -- when Cisco	02:03PM
16 A. Yes, I have.	02:01PM	16 engaged them after receiving this letter?	02:04PM
17 Q. Did you receive a copy of it on or	02:01PM	17 A. Yes.	02:04PM
18 about the time that it was received by	02:01PM	18 Q. Was that advice in written form?	02:04PM
19 Mr. Scheinman at Cisco?	02:01PM	19 MR. REINES: It's fine. It is again	02:04PM
20 A. Once again, I'm sure I received it. I	02:01PM	20 vague just because I know there were PowerPoints	02:04PM
21 believe I received it eventually from	02:01PM	21 that were presented at meetings with the other	02:04PM
22 Mr. Scheinman. I'm sure I received it from someone	02:01PM	22 side. So if you consider it an electronic	02:04PM

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1	PowerPoint, you know, that kind of issue --	02:04PM	1	anyone acting on Cisco's behalf respond to	02:07PM
2	MR. PRICE: Sure. I'm not talking	02:04PM	2	Mr. Giordano's September 7, '01, letter between	02:07PM
3	about the other side now. I'm just talking about	02:04PM	3	September 19th of 2001 and November 20th of 2002?	02:07PM
4	advice to Cisco.	02:04PM	4	A. It says so -- it says here that "over	02:07PM
5	THE WITNESS: I'm sure some of it was	02:04PM	5	the next few months, I had a number of	02:07PM
6	in written form.	02:04PM	6	conversations with your attorney when, in	02:07PM
7	MR. PRICE: Let's mark the next	02:04PM	7	January 2002, he called me to indicate that Cisco	02:07PM
8	document as Exhibit Barr 022 for identification.	02:04PM	8	and Telcordia were working on other business	02:07PM
9	(Exhibit Barr 022 was marked for	02:04PM	9	matters that may address the matter and he was not	02:07PM
10	identification by the reporter.)	02:05PM	10	permitted to pursue further discussions.	02:07PM
11	BY MR. PRICE:	02:05PM	11	"Since that time, we have not made any	02:07PM
12	Q. Does this reflect Cisco's retention of	02:05PM	12	progress toward bringing our licensing discussions	02:07PM
13	Baker Botts for the purpose that you mentioned?	02:05PM	13	to resolution."	02:07PM
14	A. Yes.	02:05PM	14	BY MR. PRICE:	02:07PM
15	Q. And was Mr. Showalter the attorney at	02:05PM	15	Q. Do you know what the other business	02:07PM
16	Baker Botts who was principally responsible?	02:05PM	16	matters referred to in that paragraph were?	02:07PM
17	A. The lead -- yeah, the lead attorney	02:05PM	17	A. I was aware that OSMINE was still	02:08PM
18	for us.	02:05PM	18	ongoing, I believe, and discussions about	02:08PM
19	Q. The letter from Mr. Giordano to	02:05PM	19	partnering and testing and -- let's see. We're in	02:08PM
20	Mr. Scheinman was dated May 27th -- I'm sorry. I	02:05PM	20	period 2002. There could have been other	02:08PM
21	misread -- September 7, 2001; is that correct?	02:05PM	21	discussions of other business arrangements with	02:08PM
22	That's Exhibit Barr 021.	02:05PM	22	Telcordia.	02:08PM
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1	A. That's what it says. Yes.	02:05PM	1	Q. By November 20th of 2002, the	02:08PM
2	Q. The letter from Mr. Showalter to	02:05PM	2	memorandum of understanding had expired, had it	02:08PM
3	Mr. Giordano is dated September 19, 2001,	02:05PM	3	not?	02:08PM
4	twelve days later; is that correct?	02:06PM	4	A. Well, that's correct.	02:08PM
5	A. That's what it says. Yes.	02:06PM	5	Q. And, in fact, on September 7, 2001,	02:09PM
6	MR. PRICE: Let's mark the next	02:06PM	6	when Mr. Giordano wrote to Mr. Scheinman, the	02:09PM
7	document as Exhibit Barr 023.	02:06PM	7	memorandum of understanding had expired; is that	02:09PM
8	(Exhibit Barr 023 was marked for	02:06PM	8	correct.	02:09PM
9	identification by the reporter.)	02:06PM	9	A. When was that?	02:09PM
10	BY MR. PRICE:	02:06PM	10	Q. September 12th of 2001.	02:09PM
11	Q. Have you ever seen this document	02:06PM	11	A. As we said earlier, it was due to	02:09PM
12	before?	02:06PM	12	expire in 2000. Right? Yeah, sometime in 2000.	02:09PM
13	A. Yes, I have.	02:06PM	13	MR. PRICE: The next document should	02:09PM
14	Q. Do you recognize this as a letter from	02:06PM	14	be marked as Exhibit Barr 024 for identification.	02:09PM
15	Mr. Giordano to Mr. Scheinman dated November 20,	02:06PM	15	(Exhibit Barr 024 was marked for	02:09PM
16	2002?	02:06PM	16	identification by the reporter.)	02:10PM
17	A. Yes.	02:06PM	17	BY MR. PRICE:	02:10PM
18	Q. More than a year after Mr. Showalter	02:06PM	18	Q. Can you identify this document?	02:10PM
19	wrote to Mr. Giordano in response to Mr. Giordano's	02:06PM	19	A. This is a printout of an e-mail which	02:10PM
20	letter of September 12, 2001?	02:06PM	20	states it is from Dave Sincoskie to Dan Scheinman	02:10PM
21	A. The calendar speaks for itself, sir.	02:07PM	21	with several persons copied. It has some	02:10PM
22	Q. And to your knowledge, did Cisco or	02:07PM	22	attachments.	02:10PM

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